

ATTACHMENT 1: MILITARY ACTIVITIES ON THE PUBLIC LANDS

This attachment is intended to provide an easy reference table of authorizations available for military activities and enhance understanding in the application of the policies to actual situations through use of examples.

A. Table of Casual Use and Authorizations Available to Applicant Agency

Authority	Federal Military <u>1/</u>	State National Guard
Casual Use Level Activity:	x	x
FLPMA 302(b) permit		x
FLPMA 302(d) permit (Alaska only)	x	
FLPMA 302(b) lease		x
Right-of-way	x <u>2/</u>	x <u>2/</u>
FLPMA 307(b) cooperative agreement	x <u>3/</u>	x <u>4/</u>
Withdrawal	x <u>5/</u>	x <u>5/ 6/</u>
Recreation and Public Purposes Act lease or patent		x

NOTES:

1. If the authorization includes use by foreign military forces, only the authorization types shown in this column are appropriate.
2. Use of a right-of-way for the purpose of conducting military maneuvers is not appropriate (Department of the Army, 95 IBLA 52, December 1986).
3. The actions authorized for Federal agencies are limited to those that are similar or closely related to the programs of the Secretary of the Interior for the public lands involved.
4. The actions authorized for non-Federal agencies are not limited by the requirement that they be similar or closely related to the programs of the Secretary of the Interior for the public lands involved.
5. Subject to the Engle Act restriction.
6. Application by the Army Corps of Engineers on behalf of the Army National Guard.
Application by the Army Corps of Engineers or the Department of the Air Force on behalf of the Air National Guard.

B. Choosing the Appropriate Means to Allow Military Activities on the Public Lands. The following is general guidance to assist the BLM authorized officer (AO) with choosing an appropriate method of accommodating, if appropriate, proposed military activity on BLM-managed public lands.

1. CASUAL USE LEVEL OF ACTIVITY. Casual use is a concept, not an authorization. The concept is that there are activities which may occur on the public lands whose impact on the environment and other public land users is negligible and therefore, an authorization is not needed. This is the small hunting, hiking, or rafting party; somebody rock hounding; the miner prospecting prior to filing a claim, etc. Casual use of BLM-managed public lands is defined by (43 CFR 2920.0-5(k), 2920.1-1(d) and 2800.0-5(m) (see also BLM Manual Section 2801.48.A).

Some military personnel and unit activities, such as hiking, temporary camping, river rafting, parking vehicles on existing trails or roads may be considered casual use level activities if they do not have any adverse safety impacts on other public land users and do not occur on a continuous basis. These activities have only a minimal and transient environmental effect on relatively small areas of the public lands and will not be disruptive to other public land users and the general public. The military component must coordinate with the AO in writing to ensure the proposed activity is determined to be a casual use level activity. No authorization is required; however, it is appropriate for the BLM AO to send a letter acknowledging the coordination with the military and that a determination has been made that the proposed activity is a casual use level activity.

Any activity that uses live munitions, except blanks and certain pyrotechnics, is automatically considered above the threshold of casual use and must have some type of authorization. Use of blank munitions may be of a casual use level, if it is determined by the BLM AO to not disturb recreation sites, sensitive wildlife habitat, wild horses and burros, or livestock. The use of some types of pyrotechnics may be considered of a casual use level for use as “smoke” to locate an individual on the ground and/or provide wind direction to a helicopter. Use of pyrotechnics such as trip flares, illumination flares, and “smokey SAMs” [a simulated missile launch] to simulate combat situations is most likely above the threshold of casual use. Any pyrotechnic use on public lands **must** be coordinated with the local BLM office and conducted in accordance with fire season restrictions or requirements.

Depending on the level of military activity or the remoteness of an area, it may be desirable to temporarily post access roads or trails to areas being used by the military, so the presence of military activity will not alarm civilians in the area.

Examples of military activities that might be considered of a casual use level are:

a. An army long-range patrol of approximately 12 or fewer (squad size) individuals in uniform with weapons and any motorized transport confined to appropriate existing roads and trails;

b. Individual or small team in uniform with weapons, approximately 12 or fewer, map reading and compass training with the unit headquarters and any motorized transport confined to appropriate existing roads and trails;

c. Special operations training of team (20 or fewer) or subteam size in uniform and with weapons on a reconnaissance, extraction, infiltration, or similar stealth type mission.

d. Small unit, approximately 50 or fewer (platoon size), conducting mountain climbing training with no encampment, and with the unit headquarters and motorized transport confined to appropriate existing roads and trails.

e. Visual cueing: Visual cueing is the placement of military vehicles or equipment along existing roads or trails to represent “ the enemy” and provide recognition training for aircraft pilots and crews. Typically, tanks, trucks or missile launchers are placed individually or in small groups, left for a relatively short period of time (one to two days), and then relocated so as to mimic actual on the ground military activity. Although considered a casual use level activity, the use of the public lands for this activity must be coordinated with the BLM AO to ensure equipment is not placed in environmental or public land user sensitive areas. If equipment used for visual cueing is to remain at a location for more than one week, the need for an authorization should to be considered.

f. Practice landing and take-off of a helicopter or other aircraft at a remote location on public lands that are not critical habitat, an ACEC, or of some other sensitive nature.

g. Search and rescue training (see Cooperative Agreement Section 5.a.1.) which is not repetitive at the same location.

2. PERMITS. Permits may be used for temporary, minimal impact SNG activity and for Federal military activity in Alaska. Rental and/or cost recovery are determined in accordance with existing regulations.

Examples of military uses that may be appropriate for authorization by permit are:

a. Activities listed under CASUAL USE LEVEL OF ACTIVITY, but where more personnel are involved, where there may be some limited use of off-road vehicles, or the activity is of a repetitive nature, e.g., one weekend a month.

b. A short-term, temporary encampment in support of a casual use level activity or another authorized activity.

3. LEASES. FLPMA leases are of limited availability. See 43 CFR 2920.1-1(a).

Examples of SNG uses might be State military department headquarter’s buildings or SNG armories. Recreation and Public Purposes Act leases are discussed separately below.

4. RIGHTS-OF-WAY (R/W). R/W are used for the purposes listed in Section 501(a) of the FLPMA. FLPMA, Section 507 specifically addresses rights-of-way for Federal agencies. The Interior Board of Land Appeals (IBLA) has held that a R/W may not be used for Federal military maneuvers (Department of the Army, 95 IBLA 52, December 1986).

a. A R/W is appropriate for the transportation or transmission of commodities or information over, upon, under, and through public lands and for related facilities.

Examples of military R/W uses include, but are not limited to, roads, power lines, pipelines, communications lines/cables, and communications. RADAR, LIDAR, telemetry, or similar systems used for air traffic control, aircraft warning and control, tracking of test objects, tracking of training missions, to simulate enemy radar, weather forecasting, or any other military use of these type systems is normally authorized by a communication site right-of-way. These systems are electromagnetic systems which send and receive signals which contain information and, therefore, are considered a communications device similar to radio, television, and microwave. Only when the instrumented complex has some unusual characteristic that would cause it to have a major effect on the environment or on other public land users would a withdrawal be considered.

b. A R/W may be used to support airspace management objectives. A user of uncontrolled or unallocated airspace overlying BLM-managed lands may apply for an "air navigation" R/W to control the height of structures on those lands. The purpose of this R/W is to ensure safe navigation for the special requirements of that airspace user or to ensure a clear line-of-sight for communications devices. If the R/W is granted, any future authorizations for structures which exceed the height limitations may be issued only after receipt of the R/W grantee's comments and/or concurrence. This type R/W is intended to support a route, flight corridor, or airfield flight patterns or a line-of-sight requirement for communications; it should not be used for large areas of airspace.

5. COOPERATIVE AGREEMENTS. Cooperative agreements, including memoranda of understanding, are used differently for the Federal military and the SNG.

a. FEDERAL. Section 302(b) of FLPMA restricts the use of cooperative agreements between the BLM and Federal agencies to those situations where the proposed use and development are similar or closely related to the programs of the Secretary of the Interior for the public lands involved. Generally, Federal military activity does not fall within this restriction; however, some of the Army Corps of Engineers and Navy Facilities Engineers civil construction projects, environmental studies, and other related actions that are similar to BLM programs may be appropriate for the use of agreements. The primary authority to enter into the agreement is Section 307(b) of FLPMA, which states the Secretary may enter into contracts and cooperative agreements involving management, protection, development, and sale of public lands.

(1) Search and rescue (SAR) training may be appropriate under casual use or an MOU. However, combat SAR (CSAR) where "aggressor" forces are used must be evaluated to

determine whether the proposed activity goes beyond casual use and if so, a Cooperative Agreement is the appropriate authorization. Search and rescue training, even with the combat simulation, is a program closely related to the programs of the Secretary of the Interior and provides benefit to the local community when such service is needed.

(2) Safety zones on public lands which must be evacuated during missile launch operations may be suitable for authorization by a cooperative agreement. The Secretary of the Interior has a public safety responsibility associated with management of the public lands. The key piece of information which must be analyzed is how often and for what duration the lands must be evacuated and how does that impact other public lands users. The AO must determine when the impacts to other users becomes sufficient that another type authorization is more appropriate.

b. SNG. Agreements with the SNG do not have the "similar or closely related to the programs of the Secretary" restriction. The primary authority to enter into the agreement is Section 307(b) of FLPMA, which states the Secretary may enter into contracts and cooperative agreements involving management, protection, development, and sale of public lands. The term "development" has generally been interpreted to mean actions which support BLM management, e.g., guzzlers, fences, and the like. The AO must exercise sound judgment as to what is an appropriate "development" in an agreement versus what would be authorized by use of a permit, lease, etc.

6. WITHDRAWAL AND RESERVATION. The phrase "withdrawal and reservation" refers to withdrawing the lands from operation of some or all of the general land laws and the reservation of the lands for a specific Federal purpose. A withdrawal and reservation may only be made by Congress or, pursuant to section 204 of the FLPMA, by the Secretary of the Interior.

Withdrawals for SNG's are normally applied for and held by the Department of the Army, with the U.S. Army Corps of Engineers as applicant. The Department of the Air Force may apply for a withdrawal for the benefit of the Air National Guard. Withdrawals are not made to agencies of the Department of Defense (DOD) or the National Guard Bureau as they do not have statutory authority to hold real estate.

a. Administrative Withdrawal. The Secretary of the Interior will normally take action on new military withdrawals less than 5,000 acres in the aggregate for any one military facility since the last Act of Congress for that installation or since February 28, 1958, whichever is later. A congressional military withdrawal for less than 5,000 acres is an option that can be requested by the military or BLM. A request by BLM for a congressional military withdrawal of less than 5,000 acres would only be appropriate where the proposal is highly controversial.

If the military request is for an administrative withdrawal of less than 5,000 acres, but the BLM AO's assessment is that a legislative withdrawal of more than 5,000 acres is appropriate, then this disagreement must be resolved prior to BLM's sending its recommendation for the withdrawal to the Secretary of the Interior.

b. Congressional Withdrawal. A congressional withdrawal is required when a new withdrawal for military purposes is more than 5,000 acres in the aggregate for any one military facility since the last Act of Congress for that installation or since February 28, 1958, whichever is later. A Congressional withdrawal extension may be required by the statute which established the current installation withdrawal. These withdrawals are processed by BLM in the same manner as administrative withdrawals, except that the Secretary of the Interior submits a legislative recommendation to Congress (after receiving Office of Management and Budget clearance), instead of signing the withdrawal order. The BLM drafts the proposed legislation and is responsible for including all the appropriate aspects of jurisdiction and natural resource management for the proposed military reservation based on the reports prepared by the BLM Field Offices. Neither the BLM nor the DOI has the authority to approve or deny a military application for a legislative withdrawal, only Congress has that authority (43 CFR 2310.3-2(f)).

c. When is a withdrawal appropriate? A withdrawal is used only when other authorization options do not satisfy the military's requirement for safety and/or control of access to the lands. Safety is the primary justification for a withdrawal. Military activities are inherently dangerous with use of live and practice munitions, maneuvering vehicles, and other activities not normally occurring in the private sector. A withdrawal and reservation is used to separate the military activity from other public users of the public lands. All areas which might contain unexploded ordnance and all areas where chemical munitions, other than riot control agents, are used must be withdrawn. Additional situations which might lead to a withdrawal and reservation are where the military has a significant investment in facilities; the military presence will be sufficiently intensive, continuous, and long term so that the exclusion of other public land users should be considered appropriate; or when restriction of access to classified activity is required. The quality of life of DOD personnel is considered a component of the national defense mission; a military service may request a withdrawal for recreational purposes such as a golf course, skeet or trap shooting facility, or a campground.

d. Tailoring the Withdrawal Order: The separation of the general public from the military activity is accomplished by withdrawing the lands and reserving them for the military activity. There is, however, great variability of military activity which lends itself to tailoring the withdrawal to the specific situation. Also, with the restrictions placed on the BLM by Congress, a withdrawal often has to substitute for a permit, lease, or other type authorization which BLM would normally use to authorize the activity.

(1) Reserved for what uses? The nature of the uses is the primary consideration on which the remainder of the withdrawal language rests.

(a) Questions to be considered include:

1. Is the use inherently dangerous to other public land users? What separation is needed to keep the general public out of harms way?

2. Is exclusive use needed? Some of the time or all of the time? For all the land or for part of the land?

3. Can other compatible uses be accommodated?

4. Are there realty actions to be allowed by other parties, e.g., exchanges, rights-of-way, permits, etc.

5. Are there mineral actions to be allowed, including mining, oil and gas leasing, geothermal leasing, materials act sales or free use permits?

(b). These questions lead to: Should the wording related to uses be broad, e.g., such as “all military uses” allowing anything military related to occur, or should the wording be narrow/restrictive such as “for a training range, with no explosive ordnance used” or “maneuver area with no live munitions authorized”?

(2) Size of withdrawal? The lands to be withdrawn should be kept to a minimum consistent with the military’s requirements for safety and security. The increasing demands on access to and the availability of public lands is a major constituent issue. Where possible, multiple smaller parcels in the nature of the Juniper Butte Range in Idaho or the Fallon Range Training Complex in Nevada is preferred to the single large block withdrawal of a Nellis Range in Nevada. This may increase the number of complaints from public land users about military activity, but at least the public still has access to the public lands. While multiple smaller withdrawals may work for air-to-ground operations, it is much less suitable for army maneuver areas.

(3) Which agency, the BLM or the military service, should have administrative jurisdiction; some or all?

(a) The full spectrum from DOI/BLM retaining administrative jurisdiction, such as in a situation where the withdrawal is substituting for an action BLM would normally authorize by a permit, to full transfer to administrative jurisdiction [excluding minerals], such as for the impact area of a high explosive bombing range, is available.

(b) Administrative jurisdiction over the lands is most often transferred to the agency granted the withdrawal. The consequence of this is that the administering agency’s laws, regulations, and policies apply to the management of the lands. That means the BLM loses almost all control over withdrawn lands, whereas with other types of authorization the BLM retains some level of control over activities on the affected lands. In practical terms this means the Sikes Act applies to natural resource management and any revenues generated from natural resources go to the installation conservation program.

(c) In some circumstances, jurisdiction over the lands may be retained by the BLM while the lands are reserved for military purposes. This option might be used when the

military must guarantee its ability to rely on the availability of an area, but most of the time do not need to exercise full control of the area. Examples might include safety evacuation areas associated with missile launch facilities and areas which may be used intermittently, but repetitively, for special operations training. In this situation, resource management is pursuant to the FLPMA and other public land laws and any revenues generated from natural resources are deposited in the U.S. Treasury.

(d) The recent trend in congressional withdrawals for military purposes is to create a co-management situation where resource management responsibilities are retained by the DOI to the maximum extent feasible. The decision as to whether co-management is appropriate is based on “what makes sense” in the context of the amount of land withdrawn, the land withdrawal pattern, and the resources to be managed relative to the entire military installation. With the passage of the Sikes Act Amendments, the perceived need for DOI to manage natural resources on military installations with withdrawn public lands has been greatly reduced.

(4) What laws should the lands be withdrawn from? The lands may be withdrawn from the operation of certain public land laws and left open to other laws. There is standard language which is normally used – “. . . are hereby withdrawn from all forms of appropriation under the public lands laws, including the mining laws and the mineral leasing and geothermal leasing laws.” Lands are not normally withdrawn from the operation of the Material Sales Act of 1947, 43 U.S.C. 1185. Consideration must be given to leaving the lands open to the mineral leasing and geothermal leasing laws.

(5) What should the term or duration of the withdrawal be? The term or duration of a withdrawal of less than 5,000 acres is governed by section 204(d) of the FLPMA. The proposed recommendation for the duration of a legislative withdrawal, i.e., over 5,000 acres, is determined by the military requirement, BLM future plans for the lands, and public input during the NEPA process. Justification of the term must be sufficient to convince the BLM Director, Assistant Secretary - Land and Minerals Management, the Office of Management and Budget, and Congress that it is reasonable. Usually, the duration will be between 10 and 50 years. On the low end might be a facility that has a limited anticipated life span, such as an electronic facility where the technology might be obsolete within the ten years. On the other end of the spectrum are the installations which are designated by the military as components of the “Major Range and Test Facility Base” (MRTFB). Approximately 15 MRTFB installations are at least partially authorized by withdrawal. These installations include the bulk of the lands withdrawn for military purposes. The MRTFB installations are the “backbone” of the military services and are critical to the continued success of the U.S. military. The military will most likely request the MRTFB installations have a 50-year withdrawal duration. Congress has never approved a withdrawal for military purposes with a duration greater than 25 years.

e. Transfer as “Real Property” in Place of Withdrawal: Where the military has requested that more than 5,000 acres of lands be withdrawn or where there is already an existing withdrawal for military purposes and the public lands are (1) only a small portion of the entire installation, generally 15% or less; and (2) the public lands are scattered in multiple parcels;

consideration should be given to a request for legislation to convert these lands to real property and transferring the real property to the military. This legislative request replaces the request for a legislative withdrawal. Withdrawn public lands which are inholdings in a large installation composed primarily of acquired real property can be a drain on DOI and military management resources for no noticeable gain. As either a withdrawal of 5,000 acres or more, or review of a military withdrawal pursuant to FLPMA Sec. 204(l) must go to Congress, an opportunity is provided to convert these lands to real property and to transfer them as real property to the military. This reduces DOI's potential liability under environmental laws while these lands are withdrawn for military purposes. However, when these lands are determined to be excess to the military's needs, the DOI would still have the opportunity to acquire them during the General Services Administration screening process for excess Federal lands.

f. Compensation. It is not appropriate for the BLM to seek "compensation" from the military for lands withdrawn from the public domain and reserved for military use. Title to the public lands rests with the "U.S. Government", not the DOI or the BLM. Public domain lands were not acquired with DOI or BLM appropriations. In the unlikely event that BLM public lands acquired using appropriated funds (Land and Water Conservation Fund) or funds available from sale authorities (Southern Nevada Public Lands Management Act, P.L. 105-263; Federal Land Transaction Facilitation Act, P.L. 106-248) are to be transferred to the military, then the military service shall reimburse the BLM at fair market value pursuant to the Federal Property Management Regulations at 41 CFR 101-47.203-7. Also, where public land users are disrupted and opportunities lost when lands are withdrawn from multiple use management and reserved for military purposes, mitigation may be appropriate if a replacement of these opportunities is desirable. FLPMA section 402(g) concerning cancellation of a grazing permit or lease is applicable. The appropriate forum for discussing and developing mitigation measures is during the NEPA process.

g. Secretary of the Interior Residual Jurisdiction: The Secretary of the Interior retains a residual oversight responsibility on all withdrawn lands. Primarily this is to ensure the withdrawal is being used for the purpose for which it was made and that there is no undue degradation of the resources so that lands not changed in character may be returned to the operation of the general land laws. Therefore, a compliance check should be made of withdrawals every five years to ensure compliance with the withdrawal order. Any unauthorized use of the withdrawal should immediately be brought to the attention of the installation commander and a copy of the notification sent to the BLM Washington Office, Lands and Realty Group.

h. Military Land Withdrawal Handbook: A handbook for military land withdrawals is to be developed for the IMLUCC and, if appropriate, will be issued as a change or supplement to this IM

7. RECREATION AND PUBLIC PURPOSES ACT (R&PP) LEASES AND PATENTS.
R&PP leases and permits may be used for SNG activities of a permanent or long-term nature.

Examples of R&PP leases or patents are:

- a. An armory.
- b. Small area training facility, such as for riot control or urban warfare training.
- c. Physical fitness training course.